

United States District Court Southern District of Texas

Case Number: 03mc386

ATTACHMENT

Description:

☐ State Court Record ☒ State Court Record Continued

☐ Administrative Record

☒ Document continued - Part 150 of _____

☐ Exhibit to: _____
number(s) / letter(s) _____

Other: _____

1 boyfriend?

2 A She did not say boyfriend. All she told
3 me was that he was her brother.

4 Q Did you talk about the relationship that
5 Debra Gardner had with him?

6 A Did I --

7 Q Did you --

8 THE COURT: You're talking
9 over each other. The court
10 reporter cannot take down both
11 voices at the same time. Don't
12 speak over each other.

13 Q The first time that Duane Buck came over
14 to the house where you were and knocked
15 on the door, you were sitting on the
16 sofas in the living room. Is that where
17 you were, you and Phyllis and Debra and
18 Kenneth?

19 A Right.

20 Q Let me show you what's been marked
21 State's Exhibit 13 which has been
22 previously admitted. Does that look
23 familiar to you? You can take it if you
24 need to.

25 A Yes.

1 Q What is that?

2 A That's Debra's house.

3 Q That's the living room and kind of the
4 dining area in the --

5 A Yes, that's the --

6 THE COURT: Wait until he
7 finishes. You're talking over
8 each other.

9 Q That's a photo of the living room and
10 the dining area and here's the dining
11 table in the corner, correct?

12 A Correct.

13 Q Let me show you this diagram, State's
14 No. 45. Have you ever seen that before?
15 Did the prosecutor show it to you at any
16 time or is this the first time that
17 you've seen it?

18 A This is the first time.

19 Q Look at that for a minute. If I need to
20 move it around, let me know because I'm
21 going to ask you a few questions from
22 it. Can you see it?

23 A Yes.

24 Q This depicts 7327 Puerta Vallarta and
25 it's an aerial shot into the home with

1 Puerta Vallarta out here, the driveway,
2 the garage in front of the house, a
3 front door, a living room and kitchen, a
4 hallway, a bedroom, sliding patio doors,
5 a fence. Does that all look familiar to
6 you?

7 A Yes.

8 Q Is that the front door?

9 A Yes.

10 Q Does that look familiar to you?

11 A Yes.

12 Q When he first knocked on the door, you
13 were sitting over here, or where were
14 you sitting?

15 A I was sitting over here.

16 Q Right there?

17 A On that couch right there.

18 Q You got up to answer the door, right?

19 A No, the first time -- which time are you
20 talking about?

21 Q The first time.

22 A Not the first time.

23 Q The first time you never went over to
24 the door?

25 A No.

1 Q Were you anywhere around when the door
2 came open the first time?
3 A No.
4 Q You were not?
5 A What do you mean by anywhere around?
6 Q Where were you?
7 A I was in the back when he came in.
8 Q So you didn't see him kick or push or do
9 anything to the door the first time?
10 A I heard him kick the door open.
11 Q You didn't see him kick or push the door
12 in the first time?
13 A No.
14 Q Whenever you came out from the area in
15 the back, your testimony was that there
16 was some arguing and Duane Buck was
17 angry and jealous because of your
18 brother being there; is that right?
19 A No.
20 Q Well, you said that Duane Buck cursed
21 Debra and was upset at her. If he
22 wasn't upset about Kenneth being there
23 and being jealous, do you have any
24 knowledge what he was upset about?
25 A Probably because she put him out.

1 Q That gets back to the jealousy issue,
2 doesn't it? Whenever you split up with
3 somebody and you see them with another
4 person, a lot of times that produces
5 jealousy.

6 A How he going to see her with another
7 person? He didn't see Kenneth with
8 Debra. Kenneth wasn't with Debra when
9 he came in the house.

10 Q Well, he was in the same house where he
11 had lived five years, correct?

12 A That's not what you said though.

13 Q Was Kenneth in the house with you when
14 he first came in?

15 A Yeah, he was.

16 Q I'm not asking you if they were hugging
17 or holding or anything, but he was
18 there, correct?

19 A Yes.

20 Q He didn't know either one of you, did
21 he? Correct? Did he know either one of
22 you? Did he know you and your brother?
23 Did you ever see him before that night?

24 A No.

25 Q Did you know if your brother ever saw

1 Duane Buck before that night or were
2 they strangers?

3 A I don't know.

4 Q When the argument was going on between
5 Debra and Duane Buck, Duane Buck was
6 trying to get some of his personal
7 things out of the house like his
8 clothing and tools and that sort of
9 thing, wasn't he?

10 A He wasn't trying to get anything. He
11 wasn't trying to get anything. He came
12 up to that house and he come in arguing,
13 hollering, cussing at that girl. He
14 come in like that.

15 Q He asked for some of his clothes and
16 then he went back and got some of his
17 clothes from Debra and took his clothes
18 away from there; isn't that correct, Mr.
19 Ebnezer? Yes or no? Did that happen?

20 A She brought his clothes out to him. She
21 brought his clothes back to the living
22 room.

23 Q So if his clothes were there, that's
24 evidence that he had been living there,
25 correct?

1 A It was like -- no, no, because it was
2 what you call two or three items. You
3 come all the way back for two or three
4 items?

5 Q I'm not trying to argue with you. I'm
6 trying to get to the truth. Just try to
7 calm down.

8 Tell us how many items it was.
9 I didn't know it was two or three items.
10 How many items did she bring back to
11 him?

12 A I didn't count his stuff.

13 Q You just said two or three items. Do
14 you recall him getting some tools? He
15 was an auto mechanic. Do you recall him
16 getting tools out of the garage?

17 A No.

18 Q You didn't know anything about that?

19 A No.

20 Q You didn't see that and you don't know
21 anything about that?

22 A He didn't take no tools with him when he
23 left.

24 Q Did you follow him out to the car the
25 first time?

1 A Excuse me?

2 Q Did you follow him out to his car, out
3 to the front yard and down the driveway
4 to the street the first time that he
5 left? Yes or no?

6 A I stood right there. I stood right
7 there on the sidewalk. That's the
8 sidewalk that leads to the front door.
9 I watched him get in that truck.

10 Q Did he get any tools and load them in
11 the truck?

12 A No, he didn't.

13 Q Did he do that before when you were not
14 watching him? Is that possible? Do you
15 remember that?

16 A He didn't get no tools. He didn't come
17 back for no tools. He didn't say
18 nothing about tools when he came.

19 MR. EASTERLING: I'd ask
20 that he be instructed not to
21 volunteer anything.

22 THE COURT: Only answer
23 the questions that are asked of
24 you.

1 BY MR. EASTERLING:
2 Q When you went to the back bedroom
3 because of all the arguing, how close
4 were you to Debra Gardner and Duane Buck
5 when you say there was some hitting
6 going on?
7 A I was probably as far as I am from the
8 D.A.
9 Q What were you doing? Were you looking
10 down the hallway?
11 A I was in Debra Gardner's bedroom where
12 he was hitting her at.
13 Q You were inside the bedroom watching
14 this?
15 A Yes.
16 Q The bedroom was that big, the distance
17 between you and the D.A.?
18 A You're catching on.
19 Q Now, which bedroom is the one that
20 you're talking about?
21 A The one right there with the patio
22 doors.
23 Q Right here?
24 A Yes.
25 Q Who else was in the room, if anybody?

1 A Which room?

2 Q The master bedroom is what we're talking
3 about, the one right there. Who else
4 was in the room when you saw this
5 hitting going on?

6 A Phyllis was in the room.

7 Q Was she there just as long as you were
8 there?

9 A Yes.

10 Q Did Duane have a beer in his hand?

11 A I don't recall.

12 Q Did he ever pour any beer on Debra
13 Gardner from the can or the bottle?

14 A I don't recall.

15 Q You didn't see it or you don't remember?

16 A I don't recall.

17 Q Now, you did try to get in between them
18 and separate them; would that be a fair
19 statement?

20 A Yes.

21 Q You were trying to make sure there
22 wasn't any beating going on and nobody
23 got hurt, right?

24 A Right.

25 Q Do you recall testifying in this

1 courtroom at an earlier hearing back on
2 November 4th of 1996? Do you remember
3 that?

4 A Yes.

5 Q Did you make a statement that day under
6 oath that Duane Buck kept telling her
7 that all he wanted was his clothes, all
8 he wanted was his clothes? Did you
9 testify to that in November of 1996, Mr.
10 Ebnezer?

11 A Yes.

12 Q Today you're telling us something
13 different, that he didn't want his
14 clothes and didn't ask for his clothes,
15 correct?

16 A I didn't say that. I didn't say that.

17 Q Mr. Ebnezer, if I misunderstood you, I'm
18 sure it's clear on the record, but five
19 minutes ago I asked you if he was coming
20 over there to get some personal things,
21 some clothes, and you said he wasn't.

22 A I said he wasn't coming in there to get
23 any tools because he hadn't mentioned
24 nothing about no tools.

25 Q Do you remember him asking that all he

1 wanted to do was get his clothes and get
2 out of there? Do you remember that?

3 A Yes.

4 Q So he did say that, didn't he?

5 A Yeah.

6 Q And while he's doing that, you and your
7 brother are giving him a hard time,
8 aren't you?

9 A Hell no. You ain't going to even try
10 that with me, Partner.

11 Q You don't have to curse at me, sir.

12 A Well, don't come up here and start to
13 try to make a liar out of me.

14 THE COURT: You're only to
15 answer questions. You're not to
16 argue.

17 THE WITNESS: Me and my
18 brother did not even bother this
19 man.

20 THE COURT: I'm going to
21 excuse the jury.

22
23 (The following proceedings
24 are held outside the
25 presence of the jury.)

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THE COURT: Mr. Ebnezer, I have tried to be as nice about this as I possibly can because I realize how upset you are. You only are to answer the questions that are asked of you. You can't get into a screaming match with the lawyers. Can you do that?

THE WITNESS: Yes, ma'am.

THE COURT: Do you need a few minutes? If you have something to add, the prosecution can get you back on redirect and they can ask you future questions.

THE WITNESS: All I want him to do is to ask me a direct question and quit with all that other stuff that he wants to try to pull.

THE COURT: If the questions are not objected to, you have to answer the question.

1 You cannot argue. It's either
2 yes or no or I don't know or
3 whatever it is that's asked of
4 you. If you don't understand
5 the question, ask him to repeat
6 it. We have can't have this
7 screaming match between the two
8 of you in the courtroom.

9 Do you understand, sir?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Bring the jury
12 back in.

13
14 (The following proceedings
15 are held in the presence
16 of the jury.)

17
18 CROSS-EXAMINATION CONTINUED

19 BY MR. EASTERLING:

20 Q When you say you were trying to get in
21 between Debra and Duane Buck, you were
22 threatening Duane Buck and trying to
23 force him back out of the house, were
24 you not?

25 A No.

1 Q Did you pick up a stick or some other
2 item and threaten him with it to try to
3 get him out of the house?

4 A No.

5 Q Did your brother do that?

6 A No.

7 Q You agree you said that you wanted to
8 put your hands on him, didn't you?

9 A Yes, I said that.

10 Q But you never touched him; is that what
11 you're testifying to? Did you ever
12 touch him? Did you touch him when you
13 separated him?

14 A I don't understand. I don't even know
15 how to answer that, you see, because --

16 THE COURT: Answer it with
17 a yes or no.

18 Q That's all I'm trying to find out. I'm
19 not trying to trick you. You first said
20 you were trying to be a peacemaker, you
21 and your brother. When you separated
22 them, did you touch him?

23 A I didn't touch him. All I did was keep
24 him at arm's distance. I wasn't doing
25 no pushing.

1 Q Did you touch Duane Buck when you did
2 that?
3 A Yes.
4 Q But in a peaceful manner; is that what
5 you're telling the jury?
6 A Exactly.
7 Q After he left the first time -- let me
8 back up for a minute. Did you ever try
9 to call the police at all at any time
10 that first time when Duane Buck was in
11 the house?
12 A I didn't. Debra did.
13 Q Excuse me?
14 A I didn't. Debra did.
15 Q I heard you say that you called 911.
16 Did you try to call the police at all?
17 A No.
18 Q However, when Duane Buck was getting
19 ready to leave, he tells you that he's
20 going to wait around for the police,
21 didn't he?
22 A Yes.
23 Q He wasn't in a hurry. He wanted to
24 report the threats and assaults that you
25 and you and your brother were inflicting

1 on him; is that correct?

2 A No, sir.

3 Q How long did it take for the Sheriff's
4 Department to get there?

5 A Forty-five minutes to an hour.

6 Q How long did he wait? About thirty
7 minutes?

8 A Yeah.

9 Q And there had been a lot of arguing and
10 shouting and threatening during that
11 thirty-minute time; would that be a fair
12 statement?

13 A No.

14 Q Did you ever let Duane Buck use the
15 telephone to try to call the police?

16 A I never tried to stop him.

17 Q Did he every try?

18 A No, he didn't.

19 Q Not in your presence anyway?

20 A I stayed there. I was right there. I
21 stayed there in the living room the
22 whole time.

23 Q I thought it was the bedroom. Which
24 room was it in? Did it move around from
25 the bedroom to the hall to the living

1 room?

2 A It started in the bedroom.

3 A Did it move around and go back into the
4 living room?

5 A Yes.

6 Q Duane Buck kept wanting to get his
7 clothes and personal things and his
8 tools and get the things out of there,
9 didn't he, during that thirtyminutes; is
10 that correct?

11 A No, it didn't take Debra no thirty
12 minutes to get him his clothes. She
13 gave him his clothes and he still
14 wouldn't leave. He still would not
15 leave.

16 Q Now, whenever Mr. Buck left, you sat
17 down and talked with Phyllis Taylor
18 about what was going on and who that guy
19 was, didn't you?

20 A I don't recall.

21 Q I heard you testify earlier -- and
22 correct me if I'm wrong -- that you sat
23 down with Phyllis and she told you it
24 was her brother.

25 A That's why he was there.

1 Q Isn't it also true that Phyllis told you
2 about the relationship and she told you
3 that Debra was his ex-girlfriend; is
4 that true?

5 A She told me that it was Debra's
6 ex-boyfriend, ex.

7 Q So you remember this now?

8 A Yeah.

9 Q But you don't know how long she had been
10 his ex-girlfriend, do you?

11 A From what she told me, I thought they
12 had been ex for like a couple of months.

13 Q Who told you that, Phyllis? Do you
14 remember?

15 A I don't remember if she told me that but
16 I got from the way she was talking about
17 how long it had been that it had been
18 awhile.

19 Q You all talked some more, everybody goes
20 to sleep, Duane Buck leaves, and the
21 Sheriff's Department shows up forty-five
22 minutes later?

23 A Yes.

24 Q That's a female officer?

25 A Yes, it is.

1 Q And she takes a report?

2 A Yes, she did.

3 Q How long was she there?

4 A She wasn't there that long.

5 Q She didn't take anybody to jail?

6 A No.

7 Q She left?

8 A Yes.

9 Q She didn't file any charges, did she?

10 A I don't know if she filed any charges.

11 Are you talking about the officer or

12 Debra?

13 Q The female officer.

14 A I don't know if she filed any charges.

15 Q Everybody goes to sleep and you all

16 sleep three or four hours until daylight

17 so now it's about 7:30 when the next

18 bang on the door happens?

19 A No, it's about 7:00 o'clock.

20 Q Did you see a clock anywhere in the

21 living room or anywhere?

22 A I had a pager on me. I remember looking

23 at my pager. I woke up and looked at my

24 pager to see about what time it was.

25 Q So if you gave a statement that it was

1 7:30 --

2 A Okay.

3 Q That would be accurate?

4 A Well, it could. I'm still thinking it
5 was about 6:30 or 7:00 o'clock.

6 Q Which couch were you asleep on whenever
7 he banged on the door the second time?
8 Was it the one closer to the door or the
9 one over here in the corner?

10 A The other one right here.

11 Q That one?

12 A Yes.

13 Q There are two of them here. Do you
14 remember which one it was?

15 A I just told you that.

16 Q This one here?

17 A Yes.

18 MR. EASTERLING: May I
19 approach the witness, Your
20 Honor?

21 THE COURT: Yes, sir.

22

23 BY MR. EASTERLING:

24 Q Let me show you State's Exhibit 13.

25 A This one.

1 Q For the jury's information, this one
2 right here with the blanket or whatever
3 it is on it?
4 A Yes.
5 Q The one closest to the door?
6 A No, that is not the one closest to the
7 door.
8 A I take that back. This one is a little
9 closer to the door right here?
10 A Yes.
11 Q That coffee table was there, right?
12 A Yes.
13 Q Was that the sheet and blanket that you
14 were using to sleep on?
15 A No, I don't even remember no sheet or
16 blanket on there. It was hot.
17 Q These pictures were taken sometime that
18 morning after the shooting and there's a
19 blanket and it looks like a sheet there
20 that you were sleeping on.
21 A I do not remember.
22 Q This is July, and in Houston -- excuse
23 me. This is July and it's hot in
24 Houston, right? Is that what you meant?
25 A Yes.

1 Q Now, whenever you heard the knock, you
2 were the first person who jumped up?
3 A I don't know if I was the first one or
4 not but I woke everybody up.
5 Q Did you see anybody else jump up and
6 stand up in the living room? Did you
7 notice?
8 A I wasn't noticing.
9 Q You went straight to the door, I guess?
10 A Yes.
11 Q Why did you do that?
12 A Because I knew it was him, and the way
13 he came to the house the first time and
14 he jumped on Debra, I wasn't going to go
15 through this again.
16 Q But you didn't call 911 or the police,
17 Mr. Ebnezer? Why didn't you do that?
18 Why didn't you do that if he was such a
19 threat?
20 A He was a threat to her. He was not a
21 threat to me.
22 Q Isn't it a fact that you were looking to
23 beat him up just like you threatened to
24 do the previous time when he was there
25 four hours before?

1 A I ain't threatened to beat the man up no
2 previous time, sir.

3 Q Isn't that true, Mr. Ebnezer?

4 A I wanted to but I never said to no one.
5 I kept that to myself. I never said
6 that to nobody. I said I wanted to. I
7 said I wanted to. I didn't know what
8 nobody else wanted to do.

9 Q Isn't it true that Mr. Buck went home
10 and went to sleep and when it was
11 daylight he came back to get some more
12 personal things out of the house that he
13 had lived in for five years?

14 A No, sir, that is not true. No, sir,
15 that is not true because Debra gave him
16 his little handful of clothes, two or
17 three items, whatever it was, and she
18 said that was it. That was all he had
19 in the house.

20 Q Do you know that from your own personal
21 knowledge?

22 A That's what Debra Gardner told me.
23 That's exactly what she told me. She
24 said that was all of the things that she
25 had.

1 Q And I'm sure you told the police that,
2 didn't you, Mr. Ebnezer?
3 A I don't remember.
4 Q You didn't tell the police that, did
5 you?
6 A Debra was the one that filed her own
7 report, sir, and not me. She should
8 have told the police, not me. Am I
9 right or wrong?
10 Q All right. I'll ask the policeman.
11 A Thank you.
12 Q You made a sworn statement to the
13 Detective on July 30th at 1:28 P.M. Do
14 you recall doing that?
15 A Yeah.
16 Q Who was that officer?
17 A I don't remember his name.
18 Q Have you seen him around here? Was it
19 Charles Leithner? Was it Detective
20 Leithner?
21 A I don't remember his name.
22 Q Do you remember what he looked like?
23 A Yeah, he's been here today.
24 Q When you went towards the door, the
25 deadbolt had already been broken before,

1 right?

2 A Yes.

3 Q It was real loose?

4 A No, he broke it the first time he kicked

5 the door in.

6 Q It had come completely off?

7 A No, it did not.

8 Q Was it broken where it wouldn't hold?

9 A It was broken enough to where, you know,

10 you couldn't turn it or nothing like

11 that.

12 Q So the only thing holding it was the

13 regular doorknob and not the deadbolt,

14 right?

15 A I don't remember.

16 Q So you went up there to the door?

17 A Yes.

18 Q Did you open the bottom part, the

19 regular doorknob, open that and talk to

20 him through the crack?

21 A No, I couldn't get the door open. I

22 couldn't get the door open.

23 Q Did you try?

24 A I tried.

25 Q Did you look behind to see what was

1 going on behind you or were you just
2 focused on the door?

3 A I was just focused on the door.

4 Q Did you hear anyone say anything behind
5 you when you were trying to open the
6 door?

7 A No.

8 Q You stepped back after some words
9 because you didn't want to get hit by
10 the door?

11 A I stepped back after the first time that
12 he kicked it because close as I was
13 standing to it, if it flew open when he
14 kicked the first time, it would have hit
15 me in the face.

16 Q You didn't see his foot touch the door,
17 did you?

18 A No.

19 Q So you're guessing that he was kicking
20 it, right?

21 A No, sir. I know the difference between
22 a kick and a hit.

23 Q You don't know if he was trying to put
24 his shoulder into it or not, do you?

25 A No, it wasn't his shoulder.

1 Q Did the police get any footprints off
2 the door that you know of?
3 A I don't know.
4 Q The door came open and you said that he
5 pulled up some type of gun?
6 A Yes.
7 Q Did you struggle over the gun at that
8 point?
9 A No, we did not.
10 Q He came in this door right here?
11 A Correct.
12 Q You're standing, I assume, back away
13 from the door a little bit?
14 A Yes.
15 Q Which way were you standing?
16 A I'm facing the door.
17 Q Back in here?
18 A Not that far.
19 Q Can you show me?
20 A I was only about like about like maybe
21 three to four feet from the door.
22 Q So if this is the door right here, you
23 gave it enough room for the door to
24 swing open and not hit you, right?
25 A Right.

1 Q So you're about this far from the door?

2 A Something like that.

3 Q The door comes open and you're right in
4 front of him, right?

5 A Right.

6 Q And he shoots immediately, doesn't he?

7 A He does.

8 Q And when he shoots, he shoots straight
9 across and that hole is right there in
10 that kitchen, isn't it?

11 A This man stands point blank in front of
12 me and shoots that rifle. I does like
13 this and duck, and that wasn't no
14 kitchen. That's in the dining area,
15 sir.

16 Q That's my point, Mr. Ebnezer. You moved
17 back to your left. You're saying you
18 moved to your left, right? Would you
19 like to demonstrate it for us?

20 A Thank you.

21 Q Right there. That's good.

22 A He stepped in the door. Okay? He
23 stepped in the door right point blank in
24 front of me.

25 Q Turn around and play yourself and show

1 the jury your action, what you did to
2 try to dodge the speeding bullet.

3 A I did just like that.

4 Q Okay. When you did that, the shot went
5 right behind you to the left, didn't it?
6 Didn't it? A shot coming out of a rifle
7 goes in a straight line, doesn't it?
8 Correct? It didn't bend and go anywhere
9 else, did it? It didn't ricochet, did
10 it?

11 You can answer. You can answer.
12 I'm not trying to trick you. Did it go
13 by you or did it go straight behind you?
14 Yes or no?

15 A I guess it did.

16 Q And when it did, it must have hit this
17 wall in the kitchen, correct?

18 A No, because the kitchen is over on this
19 side. The kitchen is over on that side.
20 This is the dining area over there.

21 Q I'm now showing you what appears to be a
22 hole in the wall in State's 14, State's
23 No.13, and State's No. 19. Would you
24 look at all those and get yourself
25 familiar so I can ask you a few

1 questions here? Right there, right
2 there, and right there. Are you
3 familiar with that hole now? Are you
4 ready?

5 A Yes, I'm ready.

6 Q Isn't it true that the shotgun blast
7 hole, Mr. Ebnezer, was way over here by
8 this couch right there? Isn't that
9 correct, Mr. Ebnezer, and not over here
10 where you say it was?

11 MS. HUFFMAN: Objection,
12 Your Honor. The witness never
13 testified that's where the shot
14 was.

15 THE COURT: Rephrase your
16 question. Sustained.

17
18 BY MR. EASTERLING:

19 Q Or where you say it went to when you
20 jumped away from it. Will you look for
21 State's No. 45 for a minute, Mr.
22 Ebnezer, and then compare it with the
23 photos, and then tell us on State's 45
24 where the shotgun blast is or where the
25 hole is. Excuse me.

1 A I don't have 45 over here.

2 Q I'm sorry. We don't have that. Look
3 over there where the couch is and this
4 area leading to the hallway. Isn't that
5 where the shotgun blast hole is in the
6 pictures? Isn't that correct?

7 A Yeah, you can say that.

8 Q So if you're over here where you say you
9 were, three or four feet in front of the
10 door and he opens the door and you just
11 get out of the way so the shot goes back
12 here, that shot has hit over here in the
13 kitchen wall and not ten or fifteen feet
14 over here, correct?

15 A No, sir. After just looking at these
16 pictures, I think you should go back to
17 the house and you will see where that
18 kitchen is. That shot would never have
19 hit anywhere in that kitchen.

20 Q That's because you were not standing
21 there. You started to fight over the
22 shotgun, and the shotgun blast went over
23 here when you grabbed the barrel. How
24 about that? Isn't that how it happened,
25 Mr. Ebnezer?

1 A No. No.

2 Q Then how did the shotgun blast hit over
3 here ten or fifteen feet at a forty-five
4 degree angle from the front door?
5 Explain that to the jury.

6 A He's a sorry shot.

7 Q And you say you don't even recognize
8 State's 46. You did say you recognize
9 the .22 rifle; is that correct?

10 A Well, so what's the deal? Are you
11 saying --

12 Q Which one was --

13 A So what's the deal?

14 THE COURT: You're talking
15 over each other again.

16 Q Which one did he shoot when he first
17 came in?

18 A I don't remember. I don't remember.

19 Q One of these is a lot bigger than the
20 other one; isn't that correct, Mr.
21 Ebnezer?

22 A It looks that way.

23 Q You said you recognized this one. Why
24 do you recognize the .22 rifle?

25 A Maybe I'm thinking that's the one he

1 came in there with. It didn't seem like
2 he came in with one that long. The
3 rifle didn't seem that long.

4 Q It must have been a longer struggle than
5 you described.

6 A There wasn't no struggle. Why do you
7 want to keep saying there was a
8 struggle? There was no struggle.

9 Q I want to ask you that because that's
10 what the facts are showing, Mr. Ebnezer.

11 MS. HUFFMAN: I would
12 object to Counsel interjecting
13 what his feelings are about what
14 the facts may show.

15 THE COURT: Sustained.

16 MS. HUFFMAN: I'd ask that
17 the jury be instructed to
18 disregard the comments of the
19 Defense Lawyer.

20 THE COURT: The jury is so
21 instructed to disregard.

22
23 BY MR. EASTERLING:

24 Q Now, your statement is, your
25 recollection is that you had gotten up

1 from a dead sleep. How long had you
2 been asleep? Two or three hours?

3 A Maybe two.

4 Q Up all day, most of the night, didn't go
5 to sleep until 3:30. How clear was your
6 mind at that time, Mr. Ebnezer?

7 A We went to sleep -- it might have been
8 later than 3:30. My mind was very much
9 clear.

10 Q But weren't you in a deep sleep on that
11 couch?

12 A No, I don't sleep deeply. I'm a light
13 sleeper.

14 Q And it's your recollection that there
15 was no struggle over the gun, no
16 argument, but he just comes in and
17 shoots and you jump out of the way; is
18 that correct?

19 A It's not recollection. I have no reason
20 to struggle with this man. I don't know
21 him. I don't expect this man to come
22 back to the house. I didn't even expect
23 this man to bring a gun back with him.

24 Q But you knew who was at the door, didn't
25 you? You knew who you were going to

1 confront, didn't you? He wasn't a
2 stranger? You could hear his voice,
3 right? Wouldn't that be fair?

4 A No, I didn't know who it was. I had an
5 idea who it was because the second time
6 he came in the same way he came in the
7 first time.

8 Q So you're telling this jury that when
9 somebody shoots a shotgun close to you,
10 you can jump out of the way fast enough
11 that it misses you when it discharges?

12 A Well, that's how it happened. That's
13 how it happened. I'm still here to tell
14 about it.

15 Q How far was the barrel from your body?

16 A I don't remember.

17 Q How far was the barrel from your body
18 when he got the gun, Mr. Ebnezer?

19 A I don't remember.

20 Q Was it three or four feet or farther
21 than that?

22 A I don't remember.

23 Q Why don't you remember? Can you tell us
24 that? I'm just trying to find out the
25 facts of what happened.

1 A I don't remember.

2 Q Did you ever grab hold of the barrel of

3 the .22 gun so it fired down the

4 hallway? Did that ever happen?

5 A I never grabbed no barrel.

6 Q But you ran though. After the first

7 shot you ran out the back door, the

8 patio sliding doors where Debra was?

9 A Right.

10 Q And you also said that you never ever

11 saw your brother get shot, correct?

12 A Correct.

13 Q But you testified that you told him to

14 get out of there because he had a gun?

15 A I testified as I was running out that I

16 touched my brother and said: "Look out,

17 Kenneth. He has a gun."

18 Q Did you say: "Let's get out of here."?

19 Did you say that?

20 A No.

21 Q He was in the bedroom right by the

22 sliding glass doors, right? Isn't that

23 what you said?

24 A That's what I said because the bed was

25 right here next to the glass doors.

1 That's where her bed was.

2 Q But he didn't follow you out of the
3 sliding glass doors?

4 A I don't know. I'm too busy running
5 myself. Evidently he was trying to
6 because he was coming around that way.

7 Q How can you say your brother was trying
8 to escape if he comes all the way out of
9 the bedroom where you say he was, all
10 the way down this hallway?

11 A Wait a minute. I thought you was
12 talking about him.

13 THE COURT: Wait. Wait.

14 Q I'm talking about your brother. You
15 said he was standing over by the sliding
16 glass doors when you told him the guy
17 had a gun, right? I'm not trying to
18 trick you again but you said he was over
19 by the sliding glass doors.

20 A Can I go over there?

21 Q It's okay with me. You say your brother
22 was over by the sliding glass doors and
23 you had your hand on his shoulder and
24 you told him the guy had the gun.

25 A Okay. Do you see the bed here?

1 Q Yes.

2 A He was by the bed here. This is the
3 bed. He was a lot closer to the patio
4 door. The bed is a lot closer. This is
5 where he was standing. This is where he
6 was standing. The bed was closer to the
7 patio door. He was standing like right
8 here at the end of the bed.

9 As I'm running out of there, as
10 I'm running through there, I touched him
11 on his side like this and said: "Look
12 out, Kenneth. He has a gun." I kept
13 right on running out the door.

14 Q At that point you testified there
15 already was a shotgun blast, correct?

16 A Yes, but the first shot was when he shot
17 at me.

18 Q So he should have heard that?

19 A He? Who?

20 Q Your brother.

21 A He was asleep. We were all asleep. He
22 could have heard it.

23 Q Let's move ahead for just a second. You
24 do agree though when you went back in
25 the house after all the shooting is

1 over, you did find your brother in the
2 hallway laying down?

3 A Right.

4 Q He had come from where he was over here
5 all the way across the master bedroom,
6 through the hallway, out to where you
7 could see him to this area right here?

8 A No, because when you came in the hallway
9 -- when you stepped out of the bedroom
10 you cannot say you go through the hall
11 to get here. From here you can see all
12 the way clear through to the kitchen.

13 Q He had to walk a certain distance though
14 to get to where he was found shot?

15 A Right.

16 Q That's the point I'm trying to make. He
17 didn't go out the sliding patio door?

18 A No, he didn't. He might have been
19 trying to help somebody or see what was
20 going on.

21 Q You were not there to see or hear that,
22 were you?

23 A No, I wasn't.

24 Q You can't testify who shot your brother
25 in that hallway, can you?